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The Mattachine Society of the Niagara Frontier

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5TH FREEDOM

A PUBLICATION FOR THE BUFFALO GAY COMMUNITY

MARCH 1983

FREE

"The Freedom to love whomever and however we want"

DISCRIMINATORY STATE LAW STRUCK DOWN

The February 23rd ruling by the New York State Court of Appeals, which struck down one of the state's loitering laws, culminated many months of legal struggle that began in Buffalo, New York. In August 1981 Robert Uplinger was arrested on Buffalo's North Street for soliciting an undercover male police officer. He was convicted by City Judge Timothy Drury for violating that section of the loitering law which dealt with using a public place for soliciting another person to engage in a "deviate" sexual act. This conviction was initially upheld by Erie County Judge Joseph P. McCarthy. Represented by William Gardner, a Buffalo lawyer associated with the firm of Hodgson, Russ, Andrews and Goodyear, Uplinger carried his appeal to New York State's highest court.

The loitering law that was just struck down existed on the books as a companion statute to the state's consensual sodomy law, which was declared unconstitutional in December 1980. The Court of Appeals ruling stated: "We held in *People vs. Onofre* that the state may not constitutionally prohibit sexual behavior conducted in private between consenting adults. The object of the loitering statute is to punish conduct anticipatory to the act of consensual sodomy. Inasmuch as the conduct ultimately contemplated by the loitering statute may not be deemed criminal, we perceive no basis upon which the state may continue to punish loitering for that purpose."

However, the Court indicated that its decision was not directed toward instances in which people are being offensive or annoying to others. They also noted that where money changes hands for the purpose of sexual acts, such activity is still illegal in New York State.

Judge Matthew Jasen of Orchard Park was the only dissenter in the six to one vote. He wrote that "No person should have the right to create a public nuisance or disturb others on the street so that he may later engage in private sexual conduct." He argued that the Legislature had acted appropriately in terms of the Constitution.

In the two-page majority decision its author wrote: "We do not hold that the Legislature cannot enact a law prohibiting a person from accosting another in an offensive manner or in an inappropriate place even if the underlying purpose is not a violation of law. However, it is apparent from the wording of this statute that it was aimed at proscribing overtures, not necessarily bothersome to the recipient, leading to what was at the time the law was enacted, an illegal act."

BUFFALO POLICE REACTION

The February 24 "final" edition of the *BUFFALO NEWS* carried two stories about the ruling. Buried on page 10 of the Sport's section, the main article (dateline Albany) detailed the case and the Court of Appeals decision in five columns, the full width of the page. The second article, written by a local reporter, was headlined, "Court Decision on Loitering Law Upsets Buffalo Police Officers."

The local story quoted Buffalo Police Commissioner James B. Cunningham and personnel from the Bureau of Vice Investigating. Their comments were stongly critical of the ruling, expressing their frustration at contemporary courts of law and their interpretations and application of the United States Constitution.

Responses to this historic court decision and to the reactions of Buffalo officials were quickly set in motion by Mattachine's Legal Committee, this newspaper's staff and other friends and supporters of Mattachine. One of the actions was an attempt to set up interviews with the three local "parties" -- Uplinger, Gardner and Cunningham. Questions asked of them by this reporter and their answers comprise the rest of this feature.

FIFTH FREEDOM INTERVIEWS

ROBERT UPLINGER

Q: "How do you feel now that a decision has been rendered by the Court, Bob?"

A: "I'm happy that it's all worked out. But it's not enough. If gays don't do anything after this case, then forget it. It didn't mean a thing! It would be a shame if gays didn't get involved after they are aware of Cunningham's response that appeared in the paper. The gay community has a real responsibility and you (Uplinger pointing his finger at the reporter) as part of one of the gay organizations in Buffalo have got to get out there and be involved."

Q: "How has this whole affair changed your life?"

A: "I found that my friends were supportive, and that included my straight friends at work. Family was also supportive when I was able to talk about the circumstances of the case with them. I know that we, as gays, belong. We are as much a part of this community as anyone else."

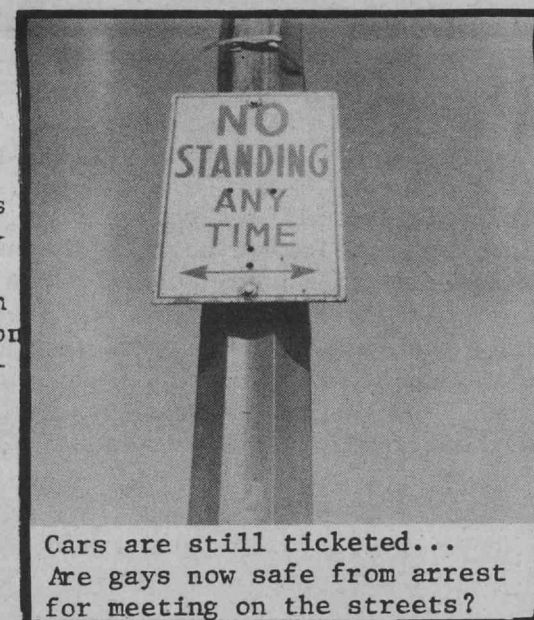
Q: "Why did you choose to fight the system and one of its existing laws?"

A: "The whole thing gan one night when I was walking in my own neighborhood, a neighborhood I have chosen to live in because of its reputation of being open and understanding to residents who happen to be gay. After some fifteen or twenty minutes of conversation with this guy I asked him over to my apartment. That was after he had said "No" to my direct question of whether he was a cop. He arrested me on the spot."

I have never said that I did not make the offer to the arresting officer. My contention was that I had the right to do what I did in talking to him on the street, and inviting him back to my place for the purpose of enjoying sex with each other. At the time of the City Court hearing, the situation was really botched up when a city attorney did not inform one of his witnesses that the issue was related to homosexuality. Also, there was not one gay person who was asked to testify at that time. I was convinced that I was on the right track to fight back.

Through all of this I have come to grips with my being an American. As one who pays nearly 40% of his income in taxes, I realized that I am entitled to everything the United States has to offer. There is a system to work through, and as a citizen and taxpayer I am entitled to protection from an unfair law."

(continued page 12)



FIFTH FREEDOM SPECIAL REPORT, pages 7-10

"LIVING THE GAY LIFE STYLE...
...STAYING OUT OF JAIL"

Editorial

A Qualified Victory

Gay people in New York State scored a major legal victory last month when the State Court of Appeals struck down the provisions of the state loitering law for the purpose of soliciting another person to engage in a sexual act.

What the victory means -- and doesn't mean -- are issues covered thoroughly in this special edition of the FIFTH FREEDOM.

Gay people throughout New York State owe a special debt of gratitude to William Gardner, the Buffalo attorney who waged the long, hard battle of words and documents that resulted in the court's decision, and Robert Uplinger, who made the courageous decision to challenge the law and suffer all the negative publicity that accompanied that challenge.

The overturn of the loitering law this year, and the state's sodomy law in December 1980 (which Gardner also had a role in) remove from the books the two major laws that were used as weapons of oppression and discrimination against gays. But let no one be deceived that the battle is over.

Consider the quotes of Police Commissioner James Cunningham, as reported by the BUFFALO NEWS, after receiving word of the court decision.

The commissioner wrongly interpreted the decision as one that will "legalize public sex," and added that "our courts are going astray."

Buffalo's top cop then said: "I think we have to read that (U.S.) constitution and see if our forefathers meant to protect the good guys or the bad guys. The things that are being legalized these days would have been punished with the dunking stool or the iron boot when that document was drafted."

The commissioner's startling statements exhibit an ATTITUDE towards gays that will not go away with a ruling from the courts. And sadly, we in the gay community must recognize that those kinds of attitudes rule the actions of many.

The battle now to be fought is one of education. We must establish a dialogue with the police and Buffalo's leaders. We must expose them to gay people, tell them of our concerns, and show them why their attitudes belong to another era.

This battle will not be won from the top down, but from the bottom up. For we begin with our families, our neighbors and our friends by showing them that gay people are good people who deserve to be treated like anyone else.

Only then will we feel free to lock the closet door behind us, and live openly in a city and nation where gay men and lesbians can live without fear of losing their jobs their family, their homes and their pride.

5th FREEDOM

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THE FIFTH FREEDOM is published monthly by the Mattachine Society of the Niagara Frontier Inc., P.O. Box 155, Ellicott Station, Buffalo, New York 14205. Published by and for the gay community with a circulation of 2,500 monthly, it is distributed free of charge through any establishment or organization permitting such distribution. Subscriptions available at a yearly rate of \$5 annually to cover postage and handling. All mailing sent in a plain, sealed envelope.

The presence of the name, picture or other representation of a business organization or person(s), in this newspaper is not an indication of the sexual preference of such person(s), organization or business.

THE FIFTH FREEDOM welcomes the submission of news items, articles, letters, drawings, photographs, poetry and short fiction from the gay community. Announcements and releases from gay organizations are placed free of charge. Materials submitted should be typewritten and doubled-spaced. We cannot return any materials submitted unless accompanied by a stamped, self-addressed envelope, and all materials are subject to editorial revision.

Deadline for the submission of all materials and advertising copy is the 20th of each month. THE FIFTH FREEDOM reserves the right to reject any materials or copy judged to be in poor taste.

Staff members of the FIFTH FREEDOM are unsalaried volunteers and additional volunteers are welcome. Advertising rates are available upon request.

Address all correspondence to: THE FIFTH FREEDOM, P.O. Box 155, Ellicott Station, Buffalo, New York 14205. Telephone: (716) 881-5335.

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Valerie Eastman, Editor

GAY PRESS ASSOCIATION

FOUNDING MEMBER

Mattachine Asks AIDS Task Force; Creation Of Gay Jobs Bank

The Mattachine Society of the Niagara Frontier has called for the creation of a special AIDS disease task force in the Buffalo area and for the formation of a committee to help gays in finding new jobs.

The calls for the special groups were made by President Rod Hensel in his annual "State of the Society" report to the membership.

Hensel was re-elected to a full term as president at the recent elections. Sam Loliger was elected vice-president, Don Licht elected secretary and Michael Mackey was elected treasurer.

Hensel called the AIDS disease "the greatest challenge the gay community faces," and one that will inevitably spread to Buffalo. "By the end of the year, I fear it will have touched each of us in a personal way," he added.

He proposed that the task force, to be comprised of both Mattachine and non-Mattachine members, disseminate information on AIDS diseases, identify local resources, and provide specialized counseling services for victims and their friends.

"We must do all we can to gather the people and resources necessary to implement this goal, for the very lives of our friends, our lovers and ourselves may depend

on it," he said.

The second project, the creation of a gay and lesbian job bank, is being asked for because of the "devastating effects" of unemployment on the Buffalo gay community.

"Not only has it robbed the treasuries and membership rolls of all gay groups, it has created a climate of despair. For those with jobs, it locks the closet door for fear of coming out and being fired from a job when no other jobs are available. For those without jobs, the psychological pressures of being gay and jobless create the feeling of being a double outcast," he explained.

The job bank, he said, would not only list job openings from employers receptive to gays, but also put gays in touch with other gays in a career field of interest. Through the job bank, information could be exchanged on skills and education needed, interview tips and where to submit applications.

He said Mattachine's goal was to "foster a spirit of cooperation and understanding" that would bring gay men and lesbians together to work on the two projects.

Persons interested in the projects should write Mattachine at P.O. Box 155, Ellicott Station, Buffalo, New York, 14205.

"Women's Personal Health Care" Forum

Gay Rights For Older Women (GROW) will sponsor a special presentation about women's personal health care on Friday, March 18, 7:30 pm at Women's Studies College, 108 Winspear Avenue. A guest speaker and a film will explore the topics of self breast and pelvic examinations and the latest information about vaginal infections. An open forum will allow for full participation by everyone present to raise questions and issues. All women are welcome to attend.

GROW is a support group for lesbians 28 years and older, and meets regularly every other Friday at Women's Studies College.

Sexuality in History:

New Directions in Research

Women's Studies College of SUNYAB is presenting "Sexuality in History," a lecture series that examines new developments in historical research.

According to Valerie Eastman, the first Coordinator of W.S.C., this academic unit was created more than a decade ago to challenge an educational system that left tremendous gaps in research and learning. Such areas as the historical and contemporary cultures, lifestyles and struggles of women, gays, third world people and others are explored, along with the origins and nature of prejudice and discrimination. Programs like this one throughout the academic world have opened up whole new areas of study and understanding. This series examines some of these areas.

Thursday, March 17, 3:30 pm:

"Free Love and Feminism in the Nineteenth Century"

Presented by Ellen DuBois, Associate Professor of History and American Studies at SUNYAB

Jeannette Martin Room, 5th floor, Capen Hall, Amherst

Tuesday, April 12, 7:30 pm:

"Roles in the Buffalo Lesbian Community: 1940-50"

Presented by Liz Kennedy, Associate Professor of American Studies, and Madeline Davis, both of the Buffalo Women's Oral History Project

Knox Hall, room 14, Amherst Campus

Friday, April 22, 7:30 pm:

"The Invention of Heterosexuality, 1892-1982"

Presented by Johnathon Katz, author of Gay American History

Kiva Room, basement of Baldy Hall, Amherst Campus

For more information, contact W.S.C., 831-3405

Gay Law Students Organization at U.B.

The Gay Law Students Organization (GLSO) is a recently established group at the SUNYAB Law School. According to a spokesperson for the group, one of their major objectives is to create a legal resource center that will keep up with new developments regarding the legal rights of gay people.

Meetings are held regularly on Thursdays at 5:30 pm in room 118 of O'Brian Hall. The group can be reached by calling 636-2161 during office hours, Tuesday, Wednesday and Thursday, 3:30 - 5:30 pm, or by writing them at: GLSO, O'Brian Hall, Room 118, SUNYAB, Amherst, N.Y., 14260.



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Revised Counselor Training Program To Begin In April

A new twelve-week training course for persons who wish to do peer counseling on the Gay Hotline will begin the first week in April, according to Dr. James F. Haynes, chairman of Mattachine's Health Committee

"This will be the first time we have offered the training course since making major revisions to the program," Haynes said, explaining that the new course expands the number of sessions from ten to twelve and adds a number of new topics.

Mattachine suspended its training program in September to make the revisions. The new training course reflects the input of Mattachine counselors and counselors from the Gay and Lesbian Community Center (GLCC).

Topics covered by the sessions will include communication and crisis intervention, self-esteem, coming out, normal versus abnormal, sexual fantasies, masturbation, relationship roles and lover problems, gay parents and parents of gays, man/boy and woman/girl love, and incest.

Also, fetishism, transvestism, transsexuals, S & M, alcohol and other drugs, suicide and lethality, and relationships with straights.

New to the course will be material dealing with rape and the latest information on health problems, including the AIDS diseases.

Haynes noted that Gay Hotline counselors must complete the course before working on the lines. Three facilitators, to include both men and women, will conduct the sessions, and participants are allowed only two absences.

Times and locations of the courses will be picked to accommodate as many people as possible who express an interest.

"Many have found these sessions to be very helpful to themselves in coming to terms with their own sexuality, even if they do not go on to answer the Hotline," Dr. Haynes noted.

Persons wishing to take the course should notify Dr. Haynes by writing: Health Committee, Mattachine, P.O. Box 155, Buffalo, New York, 14205.

McCompton's



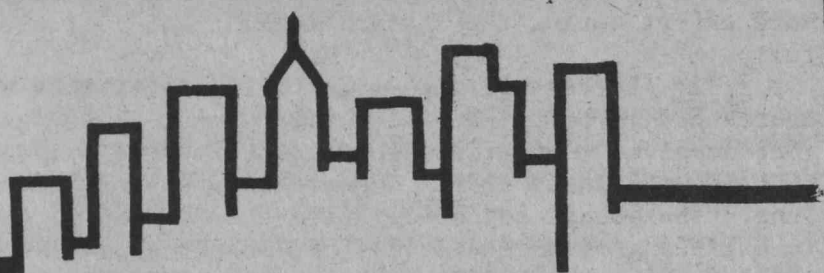
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Out and About

by Hanford Searl Jr.

Rating System: 1-5 tickets, with 5 indicating a real buy, the tops, while only a fifth of a stub means save your money for something better. Tickets Pleeze!

Carmen McRae
Tralfamadore Cafe/ March 4
Tickets: \$8.50
Rating: FIVE TICKETS

There's something to be said about old standards by such luminary songwriters as Hoagy Carmichael -- flowing melodies that carry jazz/blues overtones. And veteran balladier Carmen McRae took Buffalo by storm in spring-like weather this March before SRO audiences at four performances.

The Concord recording artist, a near legend in her own time as a weaver of quiet, soul-touching ballads, notched a magical 15-song repertoire, evenly paced through 70 minutes of memorable musicianship.

For my money, her most outstanding efforts came during the ballad, "For All We Know", and campy, teaser, "I Just Want Some Money", as well as some rhythmical Latin selections from her latest LP, "Heat Wave", which she recorded with the late vibraphonist, Cal Tjader.

Her salute to Ethel Waters from the Broadway musical, "As Thousands Cheer", found the animated McRae on keyboards singing that familiar tune, "Supper Time". The little known Carmichael song, "I Get Along Without You Very Well" exemplified her romantic themes, easily identifiable by most gay love experiences.

Perhaps that is why Ms. McRae commands a die-hard segment of gay followers, for she effortlessly strikes that human, compassionate chord of loving, losing, winning, searching, hoping.

I recommend you check out her new LP, for those of you not already familiar with her mellow, sexual overtones. (And, no, she isn't that lady with the banana/fruit hat extravaganza.)

Her trio, composed of keyboardist Marshal Atwell, drummer Donald Bailor and bassist John Leftwich were compatible and supportive throughout, despite what Jim Bisco of the BUFFALO NEWS might think. Mr. Leftwich also doubled his musical stock with his good looks.

So, next time Carmen McRae appears anywhere near where you live, be sure to plunk down whatever it takes to catch her act. It's well worth your time and money.

"Butley"

D"Youville College Kavinoky Theatre/ February 26
Tickets: \$4
Rating: Three tickets

What do you get when you cross "Who's Afraid of Virginia Woolf" with "My Fair Lady"? "Butley" of course!

At least that's what this reviewer divined from the Simon Gray comic/tragic production about the aging, witty, unhappy and soon-to-be-single gay man, Butley, superbly portrayed by veteran stage actor David Lamb.

One of the major drawbacks to this two hour plus effort was Lamb's authentic, but sometimes difficult to understand, heavy British accent, which heightened the show's English base of operation.

The rest of the eight-person cast, solidly directed by Kathryn Long began with the second lead role, that of student/protege/former lover Joseph Parry, played convincingly by Evan Parry. He embodied a young, struggling assistant trying to find his own identity personally and professionally.

Joan Fuzak, as Butley's former wife, Ann, carried an airy demeanor considering the dissolution of their rocky marriage and relationship. Thomas Martin, as the stodgy, "butch" Scottsman, was effective in catalyzing the competitive nature among gays for mates, lovers, etc.

As usual, the Victorian, gold-leaf themed Kavinoky Theatre was ideal for this type of up-close, personal glimpse into the world of British academy life, with a super stage set designed by actor David Lamb. It caught the essence of high education intelligentsia, whether real or imagined.

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Ellicott Station, Buffalo, New York, 14205

SElections

by Samuel E. Loliger

A Diary Of Sorts

When I was in elementary school a popular joke had a "moron" as the butt of each story. One that I remember ran like this: (Q): "What did the moron say when asked why he kept banging his head against the brick wall?" (A): "Because it feels so good when I stop."

As the shortest month of the year draws to a close, I have looked over the February page of my pocket planner/calendar. While I have been very busy, most of what I have done has been a matter of choice, and just when I begin to act like "if something has to be done it looks like I'll have to do it," I am reminded of my mortality.

The activities I chronicle here are gay-related. I do not think my rushing around is subconsciously masochistic (the brick wall), or that no one else can do what I am doing in the name of gay liberation. Rather, these are incidental parts of a Movement that I affect, and I know "it will feel so good when I can stop" if that is to be included on my timeline.

2/2: Local professional committee meeting-- making a joke that the reason I confuse two women colleagues is not only that I met them at the same time, but to me, as a gay man, all women look alike. (A little humor and a reminder to my colleagues where I come from just as they obliquely reference their sexual preferences by mentioning appreciation of physical characteristics of members of the opposite sex.)

2/8: Gay Professionals meeting and program -- like others, I've had my ups and downs with this group, considered by some to be the area's largest gay body. (My partner and I went to see old friends, and to enjoy a well-planned program. I also had the opportunity to talk with a newcomer, a man who is just taking the first tentative steps of coming out. Gay people need this alternative to the bars as a place to meet others of their educational level, profession, or whatever (and maybe the emphasis is on the "whatever." So what?)

2/9: Meeting of PLGC and UCCL/GC -- Meeting in a suburban church, these two fledgling groups are working in mutual support to enrich the religious life of gay men and lesbians. (Every faith, every denomination, every congregation has gay and lesbian members who are overtly and covertly excluded from full acceptance. To the degree that some of us are "out" we must make a witness for our sisters and brothers who are not where we are.)

2/10: Human Sexuality class at U.B. -- a class required of students in Medical programs at the University has a session dedicated to sensitizing future medical personnel to needs of gays and lesbians which are unique, as well as letting them know that most of our medical problems are the same as those non-gays experience.

2/11: Ad selling -- in order to finance publication of this newspaper an active advertising campaign must be run. That means periodic visits and calls to present advertisers as well as soliciting new ones. (At the MSNF meeting it was noted that calls had to be made to pick up ads for this issue. For many reasons people at that meeting were reluctant to volunteer to get out to certain locations. "What is there to lose," I figured. "I've never sold advertising space be-

fore, so why not now. Maybe I'll even be able to put forth more effort during the Easter break." P.S.: I was successful!)

2/12: Letter writing -- Letters to officials of our church had to be written to remind them of a gay presence. (One involved requesting funds to help defray expenses the UCCL/GC will incur at the denomination's biennial meeting in June. The second letter deplored the absence of the UCCL/GC in a listing of abbreviations of denominational departments and interest groups. I have since received responses to both letters. One was an apology for the "oversight" omission from the listing -- not "homophobia" as I had also suggested. The other response was an offer of \$200 for the summer meeting, which now needs a letter of acknowledgement and thanks.)

2/13: A Bishop's visit -- James Armstrong, Bishop of the United Methodist Church (in Indiana) and President of the National Council of Churches of Christ, made a one-day visit to Buffalo concluding with an ecumenical worship in a downtown Baptist church. As congregants left they greeted the visitor with a variety of comments, and it seemed appropriate to me that I remind Armstrong that the NCCC still has on its agenda the question of recognizing the Metropolitan Community Church.)

2/14: State-wide Task Force meeting -- I serve on a SUNY Task Force including several top administrators that know I am gay. The status of SUNY students who are also gay or lesbian is well within our charge. Additional input on affirmative action matters and gay-related matters within SUNY were other areas I wanted to touch on during my day there.

2/16: Church committee meeting -- Western New York has more than 60 local churches of our denomination and a committee is looking at staffing for the Buffalo office. (Providing input at a hearing conducted by the committee was a chance to "work from the inside" for gay and lesbian concerns.

2/20: Mattachine meeting -- Election of officers took place and that now includes me as Vice president. (My main concern is finding the time to be an effective officer and still do the other activist things that take my time and effort. As I faced that issue, it became an idea upon which to base a SElections column.)

2/24: New York State Court of Appeals ruling -- Being thrilled that we had won" with the decision by the highest court was short-lived after reading another news story recounting a Buffalo official's reaction to the ruling. (Most of the rest of the evening found me on the phone talking with one of the co-defendants, local gay friends, the same co-defendant's lawyer, a non-gay local newsman and friend, and the editor of this paper. All attention was focused on how we would respond to the decision as quickly and as effectively as possible. Some of our answers are elsewhere in this issue of THE FIFTH FREEDOM.)

2/26: MSNF Health Committee meeting -- Two hours spent evaluating a proposed format of Mattachine's counselor training program, the first time in many years this valuable community service will get such a looking over. The meeting is a follow-up to a day-long session in January in which the subject matter was discussed and evaluated at length.

Well. Has this month's edition of SElections been nothing more than a personal horn tooting? I hope not! Has it simply been one man's backward look at one month of his life? I don't think so. I would like to think that it might serve as a sample of things gay men and lesbians can and must do if we are ever to experience full freedom to be who we are.

One of the fascinating aspects of such involvement is that some of the activities listed can be engaged in from the position of being an advocate of liberty and justice and equality under law for all without having to declare one's sexual orientation. If confronted with the direct question, "are you doing this because you are gay yourself?" each of us can choose to either tell the truth or not. Who among us has never lied directly, indirectly, or by maintaining silence?

Come on folks; make a choice. IT IS OUR LIVES I have written about this month.

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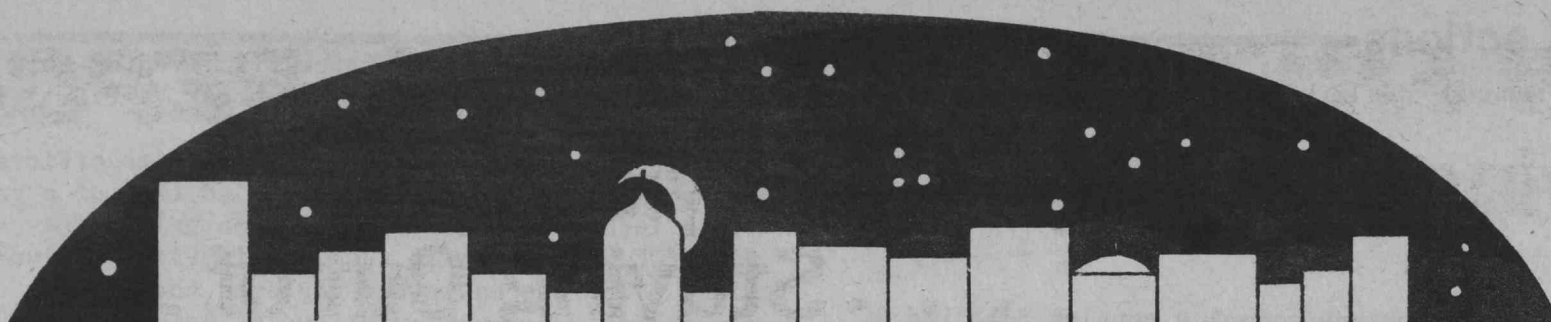
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COMMUNITY CALENDER

MARCH
1983

SUN.	MON.	TUES.	WED.	THURS.	FRI.	SAT.
13 EVERY SUNDAY: Dignity Prayer group, 1:30 # MCC Worship Service, 3 pm at GLCC	14 *GPF '83 Coalition mtg, 7:30 at GLCC	15 GLCC General mtg 7 pm at GLCC	16 FIFTH FREEDOM STAFF mtg, 7:30 at GLCC Relatives and Friends of Gays mtg, 7:30 at C.F.S.	17 * Sexuality in History lecture series, 3:30 at SUNYAB	18 G.R.O.W. mtg, 7:30 at WSC: * "Women's Personal Health Care" open forum	19
20 Dignity Worship Service, 3 pm & pot luck # Mattachine Potluck, 6:30 and mtg., 7:30 at UUC	21 * MCC benefit concert with MADELINE DAVIS, 8:30 pm at the Tralfamadore	22	23 EVERY WEDNESDAY: Gay A.A. mtg, 8:30 pm at C.H. FIFTH FREEDOM STAFF mtg, 7:30 at GLCC	24 EVERY THURSDAY: MCC Bible Rap, 7 pm at GLCC	25 EVERY FRIDAY: *GLCC Coffeehouse 7 pm at GLCC G.A.L.A. Coffeehouse, 9 pm, T.H. Gay A.A. mtg, 8:30 at A.S.	26
27	28 Gay Professional mtg. @	29	30 FIFTH FREEDOM STAFF mtg, 7:30 at GLCC	31	1 APRIL G.R.O.W. mtg, 7:30 at WSC	2
3 Dignity Worship Service, 3 pm & bus. mtg. # Mattachine Potluck, 6:30 and mtg., 7:30 at U.U.C.	4	5 GLCC General mtg 7 pm at GLCC	6	7	8	9

Abbreviations have been used in the calendar for the following locations:

GLCC: Gay and Lesbian Community Center, 97 Rhode Island St.
UUC: Unitarian Church, Elmwood Ave at West Ferry St
C.H: Columbus Hospital, 300 Niagara St, 2nd floor Board Room
A.S; Ascension Church, 16 Linwood Ave
WSC: Women's Studies College, 108 Winspear Ave

T.H: 107 Townsend Hall, SUNYAB Main St. Campus
Contact 874-4139 for location
@ Contact Tom Hammond for time and location at 842-2750 (days) or 855-0267 (evenings)
* Look for further information in this issue

FIFTH FREEDOM STAFF ORGANIZATIONAL MEETING WEDNESDAY MARCH 16, 7 30p.m. GLCC, 97 RHODE ISLAND ST.

Anyone interested in joining the staff of THE FIFTH FREEDOM -- either as a fully involved member or an occasional contributor -- is asked to attend this meeting. THE FIFTH FREEDOM is currently reorganizing its staff and welcomes new members.

APRIL: SPECIAL SPRING ISSUE Publication date: April 9
Please submit copy by March 26; typewritten, double spaced

5TH FREEDOM SPECIAL REPORT

Living The Gay Life Style. Staying Out of Jail

by William H. Gardner*

In response to the recent decision of the Court of Appeals in Albany (New York's highest court) striking down the "loitering-for-deviate-sex" statute, the Buffalo Police Commissioner stated that he was going to consult with the District Attorney to find out what laws the police could use to control gays, who had previously been arrested under the loitering law. Whether we need the information for ourselves or just to be able to help our friends, it is important to all of us in the gay community to know what they may pull out to try to throw out at us. This special report has been prepared by a local attorney who has represented many gays arrested in Buffalo. The Fifth Freedom hopes all of its readers will study it carefully, in the belief that it will help protect them from similar lifestyle police hassles.

NOTE: For those who want to read further, Bill has included legal citations in some instances. For a note on how to use these and for a further note on a more detailed legal manual to be available in the future, please see the Note at the end of this article.

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In the 1980's, New York State joined the growing ranks of states where, officially at least, it is not illegal to be gay and to have gay sex. Before People v. Onofre (51 N.Y.2d 476), decided in 1980, it was a crime, punishable by three months in jail or a \$500 fine, to engage in oral or anal sex, even in the privacy of your own home, unless you were married and doing it with your spouse. Thereafter, unable to arrest gays for consensual sodomy, the local police concentrated on arrests for "loitering-for-deviate-sex", an offense punishable by fifteen days in jail or a \$250 fine. All you had to do was make the mistake of believing that this pleasant new acquaintance you had met a while before was another gay, interested in what you were interested in, and invite him home for sex -- only to find out he was a police officer instead. One quiet, simple invitation, inoffensive in tone and given after the most discreet and careful "getting-to-know-you" process was all it took.

The potential punishment for loitering was less than it had been for consensual sodomy, but the trauma associated with exposure to police ridicule, arrest, fingerprinting, mug shots, possible publicity, the need to tell family, employer or others, the expense of hiring an attorney, the submission to a demeaning lecture from an unsympathetic judge and, on top of everything else, a conviction record which could follow you all your life was punishment and pain far beyond any possible "seriousness" of the offense itself. For those unfortunate enough to go through the experience, it was a degrading descent into a temporary and very frightening, personal hell. With the decision of the New York Court of Appeals in People v. Uplinger, decided on February 23, 1983, that law, too, is

*William H. Gardner is an attorney active in the Buffalo gay community. In his efforts to get the courts to strike down the consensual sodomy and deviate-sex loitering laws, he has represented a number of gay clients who had been arrested for gay-related offenses in Buffalo. His principal area of practice relates to commercial law, however, and he frequently assists us by referring gays needing legal assistance to other lawyers who he feels will be "right" for the situation. In addition to his activities locally, Bill is a member of the Board of Directors of Lambda Legal Defense & Education Fund, Inc. (a not-for-profit gay-rights legal organization based in New York City), as well as a member of the National Committee for Sexual Civil Liberties, a nation-wide association of professionals working for the elimination or modification of laws which unfairly impact on the private sexual lives of both straight and gay people. Bill freely admits a personal interest in preventive law in this area, since his other business and personal commitments do not permit him to take on individual cases in most situations.

now out the window.

So what do we have to fear now? What need is there for warnings about jail and the police for a gay who does not engage in prostitution? For a gay who does not make "obnoxious" scenes likely to draw crowds and disturb the peace? For a gay who does not engage in public sex acts and does not urinate in public? (Believe it or not, the tendency of gays to urinate in public on other people's lawns was one of the "good" reasons cited by Buffalo police testimony in the Uplinger case for the proposition that the loitering-for-deviate-sex law should be kept on the books. The conclusion, apparently, was that gays, unlike straights, have weak bladders.)

The answer is simple. There is no need for fear at all, provided you never talk to a stranger on the street or in a gay bar and provided you never encounter a cop who lies. Unfortunately, however, while many police officers can be counted on to tell the truth in their testimony, some officers will readily lie to make a bust possible when they want it and to make a bad bust stick when it gets to court. (I have seen both situations in the years of representing gay defendants in these cases. I want to emphasize my respect for the police officers who do their job correctly and uncompromisingly tell the truth even when a bit of twisting would help the case immeasurably and when no one could possibly prove a lie had been told. But the other type is always there, and it is the luck of the draw which kind you run into.)

The other unfortunate reality is that if the cop and the gay defendant are telling different tales as to what really happened, it is almost always the cop who is believed. This is so whether you are in front of a jury or being tried by a judge.

So if you or your friend find yourself pitted in this uneven contest, even though you may be innocent, your attorney is likely to recommend that you "take a plea" or give an apology to the officer or do whatever else has to be done to minimize the undeserved harm which the legal system is about to deal out to you.

Obviously, your greatest strength is in avoiding the problem in the first place. Some knowledge of the law, of cops, of judges and of defense lawyers is helpful here, and that is what this article is all about.

FIRST, THE LAW - - -

We will not know what the police will try to use to arrest gays until they do it. But the possibilities are fairly apparent. Putting aside other areas not directly at issue here (for example, drug laws if you have marijuana on you), the most likely statutes which may be resorted to are described below.

1. Public Lewdness (Penal Law §245.00)

Commissioner Cunningham told the press that he is going to use this law wherever he finds sex going on in automobiles, until some judge orders him not to do so. What that means is that you may be busted under this section even if the cops do not believe the charge will stick. (Now don't tune out, friend, with any "I don't do public sex" stuff. I remember at least three cases in the past ten years where my clients did not think they were doing public sex either -- until they read the fictitious account of the incident in the officers' court papers. And that estimate is conservative.)

The offense is a misdemeanor crime, with a possible 3-month jail term and/or a \$500 fine. One is guilty "when he intentionally exposes the private or intimate parts of his body in a lewd manner or commits any other lewd act (a) in a public place, or (b) in private premises under circumstances in which he may readily be observed from either a public place or from other private premises, and with intent that he be so observed."

It is possible to argue that if gay sex is going on in a car, there has been an intentional exposure of the private parts in a lewd manner or, alternatively, a lewd act (sex is "lewd" as far as the law is concerned

even though judges themselves find it wonderful) in a public place. If I were the D.A., I would argue that the need for an "intent that he be observed" applies only to the exposure done by the man in the apartment window for the benefit of the folks on the street below.

But there is a real possibility that the requirement for exposure of the private parts carries with it the implied requirement that the actor intend that they be seen -- that is, he lets it all hang out, as it were. According to the testimony of Captain Kennedy (Buffalo Vice Squad) in the Uplinger case, that is apparently the advice which the District Attorney's office has given the local police in the past.

It is also probably the correct interpretation of the law. So, do not immediately plead guilty to avoid the hassle if they get you on this one. Even if public sex was going on, you may be innocent and a reasonably attentive private defense attorney or public defender may get you off.

What you should do if you are busted. In addition to the general comments below, do notice who and how many are around when the police take you away? What was the environment when it all started? Was there anyone around who could have seen what was going on in the car? These kinds of careful details are essential if your lawyer is going to have a decent chance to help you out.

By the way, don't overlook the potential of this statute for real harm far short of actual sex. If you are gently rubbing what those tight jeans so beautifully display (whether yours or someone else's) in the dark interior of some gay bar, the admiring glances you draw may be those of a cop interested in something other than your goodlooking bod! There simply is no clear indication of what the definitional boundaries of a "lewd act" are. If the question is left up to a jury or a judge as a finder of fact, you will probably be the loser on the deal.

2. Disorderly Conduct (Penal Law §240.20)

This is a violation, possible 15 days in jail or a fine of \$250. (There is a disorderly conduct violation under the Buffalo City Ordinances, too.) The police like to believe that you can be arrested under this statute if they do not have another specific offense to rely on and they do not like what you are doing. Some of the subdivisions detailing what you can do wrong and thereby get arrested are:

1. Fighting, violent, tumultuous or threatening behavior;
2. Making an "unreasonable noise" (probably unconstitutional);
3. Making use of abusive or obscene language or using obscene gesture in public;
4. Disturbing a "lawful assembly or meeting";
5. Obstructing vehicular or pedestrian traffic;
6. Congregating, etc., and refusing "to comply with a lawful order of the police to disperse";
7. Creating a "hazardous or physically offensive condition by any act which serves no legitimate purpose."

A vigorous defense against the charge will frequently find the weakness in any of these kinds of charges. Remember that underlying any of these particular kinds of conduct there must be found a situation where the actor did the act "with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof". The courts have held that for this condition to exist, there must be other people around who may be aroused to a breach of the peace by the conduct, for it to be unlawful. Thus, for example, since the police are not expected to be aroused to a breach of the peace themselves, you could be engaged in open sex in front of uniformed police officers in the middle of the street but with no one else around, and you would not be guilty of disorderly conduct. With a crowd of straight civilians watching, though, you may well be guilty. If no one particularly is around, you are probably ok . . . but be cool and don't "give the finger" to the cop anyway. The real punishment is being busted, not what can happen to you on this rap in court later on.

3. Harassment (Penal Law §240.25)

This is similar to disorderly conduct except that, instead of being public conduct which is likely to come to the attention of other people generally and may lead to a breach of the peace, here it must be shown that the actor intended to harass, annoy or alarm an individual person. The specific intent required is the difference. The kinds of

specific prohibitions which can be the basis of a harassment conviction are:

1. Striking, shoving, kicking or subjecting the other person to physical contact or attempting or threatening to do so;
2. Using abusive or obscene language or making an obscene gesture in a public place;
3. Following a person about in a public place;
5. Engaging "in a course of conduct or repeatedly commit[ing] acts which alarm or seriously annoy such other person and which serve no legitimate purpose."

Harassment is also a violation and has the same possible punishment as disorderly conduct.

The interesting thing about this statute is that it was the "fact" that loitering-for-deviate-sex was supposed to be an automatic harassment, even if the person invited home for sex was delighted at the invitation. So went the argument, anyway, when the District Attorney was arguing the appeals in the various courts in the Uplinger case. The Court of Appeals rejected the District Attorney's argument that solicitation of gay sex constituted an automatic harassment of the person solicited, regardless of the effect of that solicitation on that person. But the attitude of the police will not change just because of the Court's holding. An invitation to an undercover cop is likely to result in some type of adverse reaction, even though it cannot result in arrest for loitering. Citizens will complain that gays in public places are still "harassing" decent people, just by being there. It isn't true, but save the argument for court.

A word to the wise: In any dealings with a new friend, if the other person says, "No", take him at his word. It is only by persisting and refusing to take a "no" for an answer that people can legitimately fall afoul of the harassment law in a solicitation situation -- in any human relationship, not just in gay ones. A new acquaintance whose declination of any invitation is not immediately accepted could be in a position to charge actual harassment, depending on the facts of the particular occasion.

4. Prostitution and Loitering-for-the-Purpose of Prostitution (Penal Law §§230.00, 240.37)

Now, don't take offense, friends. Remember that fictitious court paper the police sometimes come up with. And believe also, when your heart is pounding with excitement at this man who is interested in you, that your "yes" to something he just said that you weren't listening closely to may in fact have been an agreement to make love for \$10.00 -- his idea -- rather than just for fun. Off to jail, my friend!

a. Prostitution:

There are various sections with different kinds of prostitution offenses (including one for patronizing a prostitute). Generally, however, the undercover officer will introduce the possibility of paying you for sex through a quick comment you may not even be listening to. Your affirmative response is all he needs to hear (or pretend he heard).

Section 230.00 of the Penal Law reads:

"A person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee."

It is a crime, with a 3-month, \$500 maximum punishment possible.

ABSOLUTE STREET-SMART RULE NO. 1: If you're not into prostitution and don't want to go to jail, even for the night, say, "No, thank you, I am not interested", loud and clear, and walk away the minute any man suggests that he would like to give you money for sex or wonders if you would like to get money for sex. He is probably a cop; if not, he is probably dumb and could be real trouble anyway.

Of course, you say, nothing is absolute; what the hell? I understand, but if you want to avoid violation of the law and the hassle that can come with it, you must decisively reject any suggestion that you would do sex for money. The undercover in Buffalo will try to get you to say that you will. Any other guy is not going to talk money unless he is the prostitute.

. . . continued

A NOTE TO OUR WOMEN READERS: The male images in this article do not result from insensitivity to women's concerns. At this point, however, law enforcement and arrest is a male experience.

b. Loitering-for-the-Purpose:

The prohibition against loitering-for-the-purpose of prostitution offense is a potential trap for everyone -- including those who would be aghast at the prospect of being thought of as a prostitute. Section 240.37 was passed in 1976 to try to clean up 42nd Street for the Democratic National Convention in New York City. The Court of Appeals has held the law constitutional, despite a persuasive argument by the American Civil Liberties Union to the contrary. It is a violation (15 days and \$250), but a sex offense no one wants on his record [Higher degrees of crimes applicable for people convicted under the section who have previously suffered prostitution convictions, etc.; see section 240.37 for details.]

The statute has a heavy potential for arrest of some innocent persons. The principal provisions of the section are:

"2. Any person who remains or wanders about in a public place and repeatedly beckons to, or repeatedly stops, or repeatedly attempts to stop, or repeatedly attempts to engage passers-by in conversations, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons, for the purpose of prostitution, or of patronizing a prostitute as those terms are defined in Article 230 of the Penal Law" shall be guilty of this offense.

The problem with this law is that an officer, for purposes of making the initial arrest, may be justified in law in making an arrest when he sees one of the alternative courses of contact and infers that it is for the purpose of prostitution -- even though the conduct was not in fact for the purpose of prostitution and (hopefully) the individual will be able to get off the charge in the court proceedings later on. A taker of an opinion poll, for example, may wander about in public and "repeatedly beckon" general members of the public. Some outrageous arrests have occurred in New York City under this section, but the courts seem prepared to let the statute stand and leave the accused person free to establish the legitimacy of his conduct after arrest. Great! Consider how fine it would look to be charged with this kind of conduct on North Street in the next morning's paper, whether or not the State could prove you actually were guilty at the trial later on.

5. Trespass (Penal Law §140.05)

"A person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises."

This is a violation, possible 15 days and \$250.00 fine. This is the problem area you can get into when you wander off the sidewalk onto the private front lawn or stoop and fail to leave promptly when asked to do so. There are higher degrees of trespass, generally involving entry into buildings or fenced areas.

6. Sexual abuse in the third degree (Penal Law §130.55)

"A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent. . . ."

The Buffalo Vice Squad has tried this statute out on at least one occasion in connection with an undercover investigation on North Street. There, the undercover cop got into the defendant's automobile, entered into an extensive and suggestive conversation and, after some twenty to thirty minutes at around midnight in the car, was "groped" by the defendant twice. The jury found the defendant "not guilty", on the basis that there was implied consent on the part of the cop. The section does not lend itself very effectively to undercover investigation useage, as opposed to being used as a result of an actual complaint. It is important to be aware of the statute, however.

7. Underage sex (Penal Law §130.45)

This is somewhat far afield from the other discussion in this article but is included for completeness. Like statutory rape, it applies to any sex between an adult of at least twenty-one years of age with someone under seventeen years of age. Seventeen is the legal age of consent in New York. The crime is a felony. Ignorance or mistake about the younger man's age is no excuse. The law is clear and tough.

8. "In the Park, After Dark"

The parks close at 10:00 P.M. After that, you can be arrested for violating this Buffalo Ordinance. The punishment is about the same as disorderly conduct, but a judge would have a hard time giving you jail time with a straight face.

9. Resisting Arrest (Penal Law §205.30)

This charge is a more serious misdemeanor-crime. Possible one year in jail, \$1000 fine. You can do a lot to avoid this kind of rap, if you think it through in advance and not with your gut when the time comes. See "Getting Arrested the Right Way", below. The statute reads:

"A person is guilty of resisting arrest when he intentionally prevents or attempts to prevent a peace officer from effecting an authorized arrest of himself or another person."

A peace officer is a policeman (some other people as well). You should assume that any arrest is an authorized arrest. You are supposed to raise those questions in court, not on the street. The bottom-line will be whether or not you in fact resisted.

An officer likes to hang this one on you; it gives you a little more incentive to "be a good boy" and plead guilty to the charge that led to your arrest in the first place. The simple rule is, when they arrest you, submit fully, willingly and politely. But it's not quite that easy; see below.

SECOND, THE COP - - -

They are varied people, of course. Some are polite, sincere -- all the good things. Others, not so much so. It is a profession which at least is attractive for the guy who liked to push his weight around in high school. Here, he can do it legally. And it's easy for them to be frustrated. The courts make it tough on them. They don't get paid enough. If they listen to the largely unprofessional gripes of people like Commissioner Cunningham, they can easily begin to feel like victims, themselves, and take out their frustration on people they arrest. Some specific things you need to know about cops always:

1. If they are working undercover, THEY ARE SUPPOSED TO LIE. The idea that you can ask him if he's a cop, and he is supposed to tell you the truth, is an old-wife's tale that someone who did not have your interests at heart first started. The undercover cop would be on traffic duty for the rest of his career if he blew his own cover this way.

2. If a cop arrests you, the likelihood that he will change his mind and let you go if you plead with him on the spot is minimal -- particularly if he is working with another officer. You may do well not to give in to your panic and beg, not only for your own self-respect but also to avoid any danger of the appearance that you are trying to bribe him into letting you off.

3. When a cop arrests you on the street, in the night, without witnesses, you are "on his turf". He makes the rules there; he gets the respect. If he is so inclined, he can enforce his rules then and there and explain later that you stumbled or resisted arrest, resulting in the cuts and bruises you have when you get to the station. Don't grovel. But, at the same time, don't argue; don't argue about your "rights". There will be time enough for that in court later on. YOUR INTEREST, WHEN YOU ARE ARRESTED, IS IN GETTING TO THE POLICE STATION AS SOON AS POSSIBLE AND AVOIDING ANGERING THIS MAN WHO -- AS FAR AS HE IS CONCERNED -- IS DOING IMPORTANT WORK FOR THE COMMUNITY BY BRINGING YOU IN.

4. The cop does not have to "read you your rights" unless he intends to take a statement from you and try to use it in court. If he does read your rights to you, listen very carefully to what rights he reads. You will need to tell your lawyer exactly what he said and what he did not say.

SO, on GETTING ARRESTED THE RIGHT WAY:

1. Do pay close attention to everything that happens, everything that is said. You will need to report it in detail later on.

2. Do try to keep things in perspective; this is not the end of the world, no matter how bad it seems. Keep cool. Don't beg.

3. Don't argue with the officer. IF you have to try the case, you will try it in court later where the odds are not stacked so heavily against you.

4. Don't give a statement. Speak politely to the extent you have to, but do not say anything which confirms what you were doing or why you were doing it. Leave it to the police to prove their own case without enabling them to rely on your admissions to prove it for them.

5. If the officer seems to be trying to bully you or egg you on to something, avoid any kind of physical action which could possibly be interpreted as resistance. Cover your face (if you need to), but make no sudden physical moves unless you absolutely have to in personal self-defense. Think *GHANDI* for your own good.

6. No matter what you are thinking, treat this cop with respect. "Can we please go to the police station, officer?" You can deal with your pride later; right now, you want to get where it is safer.

7. Keep this attitude up while you are at the station — right up until you are with your attorney and have a chance to let it all out.

I realize all this may not be the best gay politics; you have to make the decision what to do. But these suggestions are designed to protect your legal position first and leave time for you to fight for gay rights later.

THIRD, THE JUDGE - - -

The judges, too, are a varied lot -- ranging from the sensitive and dedicated to those who view the position as a political job or one permitting them to come down heavy on "crime" (which may include any offensive conduct under the law with which they disagree or on which they have strong feelings). No human institution is perfect. In Buffalo City Court, the judge you get at arraignment is the one you will have through your entire case. Talk to your lawyer about the judge you got.

Here, again, some restraint and respect is needed. The judge fixes bail (or waives it), finds you guilty or not guilty (for offenses), decides whether to permit you to "cop a plea" or have an adjournment-in-contemplation-of-dismissal and ultimately sentences you. Even if the judge seems out-of-sorts or to be treating you unfairly, show nothing by way of expression or speech which indicates your disapproval or lack of respect. Ask for an adjournment to get a lawyer (or if you have no funds, ask for the public defender). You will get an adjournment also to prepare for trial. Use it promptly; be ready when the time comes. Get a lawyer on the case without delay. ALWAYS show up on time for adjourned court dates. There is no need or excuse for unnecessarily antagonizing the judge on your case on something having nothing to do with the merits of your defense.

FOURTH, THE LAWYER - - -

There is not enough space to fully explore how you should find and deal with your own defense lawyer. A few pointers, however, are in order.

First, if you are without funds to afford an attorney, you will use the public defender. Finding him will not be the problem; getting the full use of him, with his heavy case load is the problem. You will receive an appointment to come into his office to talk about his case. BE THERE FIFTEEN MINUTES EARLY. His time is valuable and in demand; you want all he can spare. FURTHERMORE, COME PREPARED. Have your "attorney's letter" with you (see below). Bring a complete list of witnesses and their addresses and telephone numbers if you have them. Have your own address and phone number available, or the phone of a near neighbor who can take a call for you in a pinch.

Second, if you are retaining your own lawyer, talk frankly about fees during your first visit. They can be expensive and may vary according to the attorney, according to your financial circumstances and according to the nature of the case. A routine driving-while-intoxicated charge, which a lawyer cannot do much about except pilot you through the system, runs generally \$750 minimum. Being charged with prostitution on a bum rap may cost you a good deal more. But some detailed information you should know:

1. Is the fee going to be the same if the lawyer has to go to trial as it will be if a plea can be worked out?

2. Is the fee based on time spent or on a flat fee for the case?

3. How and when must the fee be paid? Will the lawyer handle the case through to conclusion even if you have not yet been able to complete payment?

4. Will there be any additional fee beyond the amount quoted which you might have to come up with later (when you may be fully tapped out)?

If you are not satisfied with the first experience with your new lawyer, consider whether you should look further before you get into the case. But do it quickly. And remember two things: First, money is not everything; the cheapest price among lawyers does not necessarily mean the best service. Second, however expensive or cheap the price, you must have a feeling of trust and confidence for this attorney. If that is not there, go elsewhere without delay.

Third, respect your attorney's time. TELL HIM EVERYTHING AND DO IT RIGHT AWAY. He does not have time to pull it out of you and he needs to know everything. I recommend that an arrested person prepare an "attorney's letter" as soon as possible, addressed "To my Attorney (Confidential)". Recite in detail your activities from before the incident through the incident, the arrest, the trip to the station, the booking and the time in jail, right up to the time the police stopped dealing with you. Make it long and detailed, like a tape recorder. Don't summarize conversations; quote them as best you can remember. Who said what to whom? What was the response? Etc. Keep a copy for yourself, but do not review it later without your attorney's ok. Above all, do not show the letter to anyone other than your attorney or an attorney you are considering hiring. That way, it will remain legally confidential.

Fourth, insist, politely, that your lawyer tell you what is going on. He is busy, true; but it is your case, not his. Decisions about possible pleas, what witnesses should be called, etc. are yours to make, not just his. But be reasonable! He has other clients to take care of as well. No doctor wants to be told how to do an appendectomy; same thing with lawyers. But a good lawyer will be anxious to have you informed all the way through the case in all essential particulars.

CONCLUSION - - -

Bad attitudes toward gays were not eliminated by the judicial repeal of the consensual sodomy and deviate-sex loitering laws. They still must be contended with. In the process, further unpleasant encounters with the police are inevitable.

While the gay man will be at a severe disadvantage if he attempts to represent himself, and while lesbians may also become subject to police harassment in Buffalo (as already they are elsewhere), some knowledge of the law and of the legal process is essential if he or she is to deal with the realities presented. Hopefully, this article will be of some help.

At best, however, this is just an overview for general information purposes. The facts of a particular case will greatly affect the particular advice that is appropriate in that situation. Accordingly, pay attention to the advice your personal lawyer gives you in your situation and, as long as he continues to enjoy your confidence, follow that advice.

And through it all, the same message remains for all of us: be happy, be safe, be yourself and BE PROUD!

Bill Gardner
Buffalo, March 1983

NOTES: 1. The Penal Law sections can be found at the Buffalo Public Library. Both the Penal Law and the cases cited can be found at the Eighth Judicial District Law Library, 4th floor, Erie County Court House. "N.Y.2d" is the New York Reports, Second Series. The preceding number is the volume number; the number after is the page number.

2. Bill Gardner is preparing a law manual on various offenses gays may encounter, with references to cases, texts and other material. Should be ready June 1st.

3. Limited numbers of reprints of this article are available. Send your own envelope, already addressed, with postage affixed (37 cents for letter size envelopes; 54 cents for larger).

The Return Of Beebo Brinker

Ann Bannon: Odd Girl Out (1957), I Am A Woman (1959), Women in the Shadows (1959), Journey To a Woman (1960) Beebo Brinker (1962), reprinted by Naiad Press, 1983, \$3.95 each.

If you were out and about in the late 50's and early 60's you remember these books. We bought them at the newstands for 50¢ or 75¢, devoured them, loaned them to friends, and KNEW that Ann Bannon wrote the best in an era of lesbian pulp novels. Now that the originals are selling for up to \$100, we all wish we'd kept them!

Finally, Naiad, under the Volute imprint, has brought these books back into print, along with the works of Valerie Taylor. The Volute imprint designates Naiad reprints of the classics of our past.

Ann Bannon probably was our best author in the 50's and 60's. Her characters are real, the tenor of that time is captured in her stories, and she writes fairly well. But, it has been over twenty years since she wrote. Bannon herself says, "Looking back from the mid-80's to the distant 50's and 60's, let me share a thought with you. The books as they stand have 50's flaws. They are, in effect, the offspring of their special era, with its biases. But they speak truly of that time and place as I knew it. I would not write them today quite as I wrote them then. But I did write them then, of course. And if Beebo is really there for some of you -- and Laura and Beth and the others -- it's because I stayed close to what felt real and right."

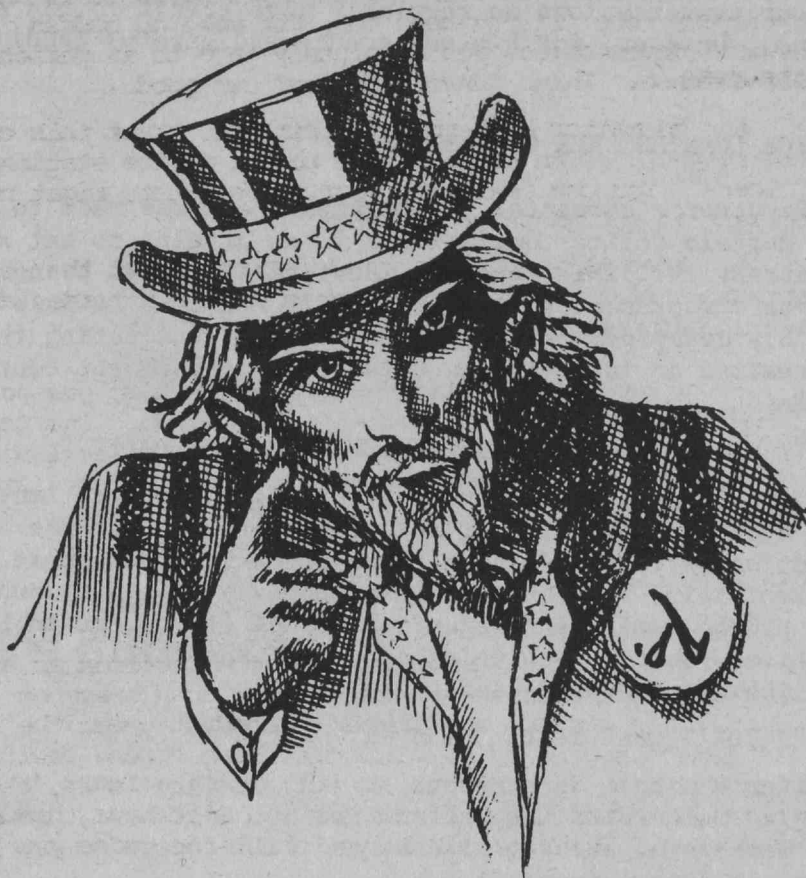
Each of these novels can stand alone, but, with the exception of Beebo Brinker, which should be first or last, are better read in order. In Odd Girl Out the reader meets Beth and Laura, college students in a sorority house, struggling with life and love. Whether you were there in 1957, or have come out much later, you can probably identify with much of their situation. But don't expect to like the ending! Laura (I Am a Woman) goes on to New York where she meets Beebo and numerous other late 50's Village characters. Themes move from tentative loving of another woman to the identity and label "Gay". Women in the Shadows is least likely to appeal to readers. It may have been necessary in the 50's to write one novel where people go straight, make babies and apparently are going to live happily ever after. Women in the Shadows does set the scene for Journey to a Woman. College roommates are reunited after many years. Marriages, and Beebo, come and go. You'll have to read it to find out who ends up with whom.

Beebo Brinker is out of sequence. Beebo appears in the three middle works, assured of who she is and definitely settled into gay life in the Village. The last book is her story, coming to New York, coming out, etc. Read it first, not last.

Now, back to those 50's flaws -- gay pride has not arrived. Some comments on being gay are, at best, depressing. Bars exist and friendships exist (sort of), but don't expect "community" centers, support groups, hot-lines, etc. They weren't there in the 50's, nor could an author make gay life look too attractive. Feminists will find issues treated lightly which would be major themes today -- leaving a husband and children, for example. Male characters, in particular the college boys in Odd Girl Out, are not as well done as the females. They don't ring true for the 50's or the 80's. And, finally, the plot lines which connect the first four works seem contrived.

Flaws aside, within each novel the picture of gay life in the late 50's and early 60's is well drawn. A part of Lesbian herstory has been preserved: the bars, the way women struggled with identity, the meaning of being a Lesbian at that time. These are classics, guaranteed to bring back memories to those who have been out for twenty years or more. For younger/newer Lesbians, Ann Bannon is a must -- just ask your older sisters.

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Hair Theater, 25 Allen Street
Monday through Saturday, 10 am to noon

-or-

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GLCC Coffee Houses

An informal coffeehouse is held every Friday evening at the Gay and Lesbian Community Center, 97 Rhode Island Street. Beginning at 7:00 the Center is open, a pot of hot water for coffee or tea is on, various refreshments are out, and people begin to drop by for a casual evening of fun, games and conversation. Activities at the coffeehouse vary as much as the participants. Everyone is welcome to drop by the GLCC on Friday evenings for some fun and socializing in a gay space.

The GLCC is also open on Monday and Wednesday from 7-9 pm and on Saturday from 2-4 pm. GLCC general meetings are held the first and third Tuesday of each month at 7:00 pm, and are open to anyone interested in helping to maintain a gay and lesbian center in the Buffalo community. The GLCC can be contacted at 886-1274. An answering machine provides information and records messages when the Center is not open.

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Q: "What now? What are your plans?"

A: "I don't consider what I did as a great thing. Everyone knowing about what has happened and the reactions -- that would be the great thing -- if something comes out of it. Going out to the bars is part of a fantasy life. The person who says, 'it can't happen to me' is sadly mistaken."

(Reporter's comments: Throughout the interview I was impressed by Uplinger's attitude that he is not some sort of hero, and that he realizes there is much to be done. In our conversations he regularly gave credit to his attorney, Gardner, for his sustenance and careful handling of the case.)

POLICE COMMISSIONER CUNNINGHAM

Q: Reporter's comments: A telephone call was made to the Buffalo Police Commissioner in an attempt to set up an interview. This reporter identified himself by name and as a representative of THE FIFTH FREEDOM, Buffalo's monthly newspaper for the gay community, indicating that he desired an interview in relation to the recent court decision.

A: "I DON'T CARE TO BE INTERVIEWED BY YOUR PAPER."

Q: This reporter was naively surprised at such an immediate and complete refusal, and went on to attempt one question: "In some cities there are regular channels of communication between members of the gay community and the police department regarding issues of concern to both parties. What do you think about the possibility of establishing something similar in Buffalo?"

A: "I DON'T CARE TO BE INTERVIEWED BY YOUR PAPER."

(Editor's note: This newspaper will again attempt to interview members of the Buffalo Police Department, including members of the Vice Squad, and will report on the efforts in future issues.)

WILLIAM GARDNER

Q: "You and I talked several weeks ago and at that time you said you thought the court's impending decision would be in your client's favor. How do you feel now, since that has been its ruling?"

A: "I am ecstatic. I feel wonderful; but I am also apprehensive because of the incredible level of thinking that goes on in our city's police department. Whatever personal views any one officer has, the atmosphere which is enhanced is the one which is homophobic. Anyone whose

attitudes might be civilized are advised to keep their silence, while those who are hostile are free to express themselves."

Q: "Why did you take on Uplinger's case in the first place?"

A: "I had been looking for a case to challenge the statute for quite some time. We first had to get rid of the consensual sodomy law, and when that was struck down, it opened the door to deal with the second law of loitering. I was not looking at this matter philosophically, but rather in a direct practical way so that no longer would people be terrorized in our community in this manner."

Q: "The NEWS quoted a Vice Squad member citing 53 arrests last year under the statute prohibiting loitering in a public place for the purpose of soliciting another to engage in a deviate sexual act. Is that a large or small number of incidents for a metropolitan area?"

A: "As far as I know Section 240.37 of the New York State Penal Law has not been applied. That law is on the books. The question is not how many arrests are involved, but rather how the law which was being used was being used in discriminatory ways."

Q: "Will you be involved if the Court of Appeals ruling is appealed?"

A: "Oh, yes. Whenever I have taken this kind of case I have been with my client one hundred percent, and that would mean to the Supreme Court if necessary. Otherwise I would not have taken the case at all."

Q: "Aren't there still other related cases pending, such as the one in which Mattachine and some of its members are plaintiffs? What is the status of those cases?"

A: "To date there has been no decision. But in due course I think they will be dismissed, especially if this case holds."

Q: "How would you assess public reaction toward this ruling?"

A: "I'm not sure the public cares, although a poll might show differently. They're not fired up. For most of them this is an abstraction. If there is a reaction it will probably be their gut reaction to the whole question of the complexity of the modern world we live in today."

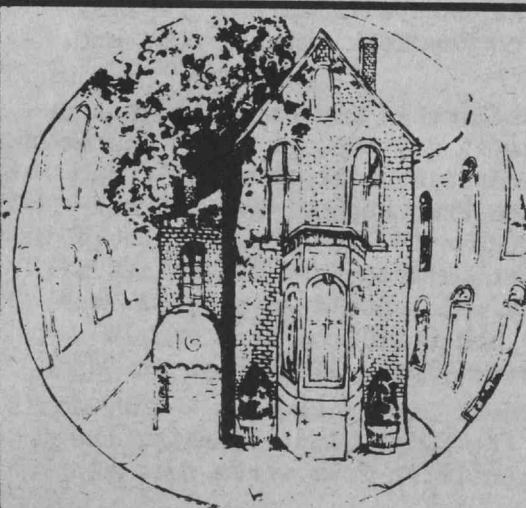
(Reporter's comments: Gardner is a man who knows what he is doing; a man who regularly acknowledges civil rights and who has demonstrated that he is prepared to defend them to the top Court of the land if necessary. He is a man to be respected!)

by Samuel E. Ioliger

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Upcoming Concerts . . . For Gays and Others

MCC Benefit Concert Features Madeline Davis

The Spring Festival Benefit, Metropolitan Community Center (MCC) of Buffalo's first fundraiser, will feature Madeline Davis at the Tralfamadore Cafe on Monday, March 21 (the first day of Spring) at 8:30 pm.

Madeline Davis has been entertaining Buffalo audiences since the 1960's when she was a traditional folksinger in area coffeehouses. During the 70's she joined forces with the emerging movements for the rights of women and gay people. Madeline has become well known as an activist in these struggles, and her music spreads the messages of her beliefs to a wide audience. She became known as the musical voice of the gay liberation movement in the early 70's with "Stomewall Nation", a song which was released as a 45-rpm record through the financial backing of the Mattachine Society. Many other songs, like "My Mother Was a Lady", often regarded locally as the "national anthem" of the women's movement, are invariably met with enthusiastic recognition by her audiences.

Madeline Davis' music reflects a deep commitment to the struggles for liberation -- and more importantly, they have become part of the heritage of this struggle.

Don't miss this opportunity to share our heritage.

Tickets are \$4 in advance (available at EMMA, GLCC, Marrakesh, Talking Leaves and from members of MCC) or \$5 at the door.

During March and April Buffalo will host two concerts featuring performers who celebrate gay life and love in their music. These women courageously stand on the merits of their undisputed talent for acceptance, as they treat their audiences to music that recognizes gay themes along with other, more accepted themes. As songwriters, musicians and performers, they aptly represent to the larger community the contributions being made from within the gay culture.

DAUGHTER OF ALL WOMEN

Madeline Davis
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The Robin Flower Band To Appear At Tralfamadore Cafe April 17



Led by strong picking Robin Flower on the guitar, mandolin and fiddle, this all woman quartet performs their own, upbeat arrangements of traditional country/bluegrass music and original songs -- footstomping music with an added touch of social conscience and compassion.

In the title song from More Than Friends, Robin Flower's first album release, she gives us a love song that celebrates the beauty and importance of sharing friendship with those you love. Going a step further, she proudly proclaims to the world: "Oh how I love her/ She's my oldest friend/ ...By the way we love each other/ You can tell we're more than friends." Who among us doesn't understand the desire to tell the world that sometimes we are "more than friends"?

"Go For the Good Times" is a rollicking country tune on her first album that honors the philosophies of the Kentucky hill people in her own background. She passes on their philosophy that it's best to "go for the good times, let 'em roll, let 'em roll/ 'Cause if you wait til tomorrow you may find/ Your motor just won't go."

There's a lot of country in the music Robin Flower performs and writes. Her lyrics take us to places where "there's berries in the patches and boggy grass down by the lake." The outdoors and the beauties of nature are vividly painted in many of her songs.

Her second album was released last year on the Flying Fish label. Green Sneakers includes a hearty dose of traditional tunes on the first side -- catchy tunes that seem to work their way inside the listener and propel the muscles to move.

On side two she introduces us to "Lemonade Jane." Remember that classic theme with the cool, hip character, who revs up to your mother's house, looking to take your older sister out for a ride, leaving trails of excitement behind? Robin gives us a new version. Behind some strong, rocking guitar work, she tells the story of "sweet, sweet Lemonade Jane", who rides up in her old red Chevy, looking for the older sister, disappointed to learn that she left about an hour ago.

In "Waiting For Sarah" Robin returns to the theme of friendship in love. She celebrates a strong, passionate woman who "knows exactly what she wants" and has "a way of wrestling with the the world" that will lead her to her goals.

As a musician and a songwriter, Robin Flower reflects the strength of women. The performances by Robin and the rest of her talented quartet are powerful, defying the typically limited role of women as only singers in the world of bluegrass music.

Don't miss Robin Flower's first Buffalo appearance at the Tralfamadore Cafe on Sunday, April 17 at 8:30 p.m. Tickets are \$5 in advance, available through EMMA and Ticketron, or \$6 at the door.

For more information call 882-0059.

GAY DIRECTORY OF BUFFALO



INFORMATION & ASSISTANCE

THE GAY HOTLINE: Tel. 881-5335. Counseling help with gay life. Information on the gay community. Staffed by trained volunteers of the Mattachine Society. Hours Mon-Fri, 7-10 pm, week-end hours vary

GAY AND LESBIAN COMMUNITY CENTER: Tel. 886-1274 on Mon, Wed, Fri, 7-9 pm and Sat, 2-4 pm. Information about GLCC and gay community. Answering machine provides info about GLCC and records messages at other times.

PUBLICATIONS

THE FIFTH FREEDOM, PO Box 155, Ellicott Station, Buffalo, NY 14205 Tel: 881-5335

ORGANIZATIONS

AFFIRMATION (NEW YORK/ONTARIO CHAPTER): c/o Tall Pines, 388 Grover Road, East Aurora, New York, 14052. Contact Hanford Searl Jr, 652-1193 or Ken Rasmussen. An organization for Gay Mormons. Meets monthly in a social/spiritual environment, non-gays and non-Mormons welcome.

ALCOHOLICS ANONYMOUS FOR GAY MEN AND LESBIANS: "Open Mind Group of AA"; PO Box 395, Ellicott Station, Buffalo, New York, 14205. Meets every Wed, 8:30 pm at Columbus Hospital, 300 Niagara St., second floor Board Room. "Live and Let Live AA Group"; c/o Ascension Church, 16 Linwood Ave, Buffalo, NY, 14209. Meets every Friday, 8:30 pm at Ascension Church. Support groups for alcoholics or anyone with a drinking problem.

COUNTRY FRIENDS: PO Box 106, Clarence Center, NY, 14032. Gay women's social group meets outside the city. All ages welcome.

DIGNITY/BUFFALO: PO Box 75, Ellicott Station, Buffalo, NY, 14205. Call 874-4139 for information (evenings). An organization for Gay Catholics and Christians. Prayer meeting every Sunday at 1:30. Worship services first and third Sunday of each month, along with a pot luck dinner the first Sun. and business mtg. third Sun.

GAY AND LESBIAN COMMUNITY CENTER (GLCC): PO Box 1595, Ellicott Station, Buffalo, NY, 14205. Tel. 886-1274. Located at 97 Rhode Island St, Buffalo. Meetings held the first and third Tuesday each month, informal coffeehouse every Friday 7-10 pm. Everyone welcome

GAY AND LESBIAN ALLIANCE (GALA): 207 Talbert Hall, Amherst Campus, SUNYAB, 14260. Tel. 636-3063, 12-5 pm daily. Coffeehouse each Fri, 9 pm in 107 Townsend Hall, Main St. campus.

GAY PROFESSIONALS (GP): PO Box 73, Niagara Square Station, Buffalo, NY 14202. A social group for gay men and lesbians who prefer an organization with a low profile. Meetings held the second Tuesday and fourth Monday each month. Contact Tom Hammond for location and information; 842-2750 days or 855-0267 evenings.

GAY RIGHTS FOR OLDER WOMEN (GROW): A support group for lesbians 28 years and older. Meetings held every other Fri. at Women's Studies College, 108 Winspear Ave. Contact GLCC for information

GAY UNITY NIAGARA (GUN): PO Box 692, Niagara Falls, Ontario Canada L2E6V5 Canadian Gay organization for the Niagara Peninsula.

LOCKPORT GAY SUPPORT GROUP: PO Box 140, Lockport, NY, 14094.

MATTACHINE SOCIETY OF THE NIAGARA FRONTIER, INC.: PO Box 155, Ellicott Station, Buffalo, NY 14205. For information call 881-5335. An organization for the gay and lesbian community which provides various services including the Gay Hotline and FIFTH FREEDOM. Meets the first and third Sunday each month at 7:30 pm, preceded by a pot luck dinner at 6:30, at Unitarian Church, Elmwood Ave at West Ferry St.

METROPOLITAN COMMUNITY CHURCH OF BUFFALO (MCC): PO Box 4183, Kenmore Station, Buffalo, NY 14217. Contact Reverend H. "Buff" Fisher at 875-3099. A Christian Ecumenical Church for the lesbian and gay community. Worship services every Sunday at 3 pm, Bible rap every Thursday at 7 pm, both at GLCC

RAINBOW DEAF SOCIETY OF WNY: PO Box 9356, Midtown Plaza, Rochester, NY, 14604. Support group for gays with hearing impairments and friends.

RELATIVES AND FRIENDS OF GAYS: Support group for non-gays who have gay or lesbian friends or relatives. Meetings held the third Wednesday of each month, 7-8:30 pm at Child and Family Services, 330 Delaware Ave (use rear entrance off parking lot on Tracy St and ring bell to be admitted) For information call Tom Hammond, 842-2750 (days) or 855-0267 (evenings)

TRANVESTITE SUPPORT GROUP (ANDROGYNY): Social and support group for gay and non-gay cross dressers. Send a SASE for a personal reply. Phone number will get a confidential return call. For information write J. Storm, PO Box 302, Buffalo, NY, 14205

UNITED CHURCH COALITION FOR LESBIAN/GAY CONCERNS: Support for persons committed to lesbian and gay concerns within Protestant Church. Call 836-7503 for information.

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DOMINQUE'S, 20 Allen St., Buffalo, N.Y. Telephone: 886-8694

M.C. COMPTON'S, 1239 Niagara St., Near Breckenridge, Buffalo, N.Y. Tel 886-8751

VILLA CAPRI, 926 Main St., Buffalo, N.Y. Telephone: 886-9469

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BOOKSTORES

EMMA, BUFFALO WOMEN'S BOOKSTORE, 168 Elmwood Ave., Near North St., Telephone: 885-2285. Lesbian and select gay books & other items.

VILLAGE BOOKS AND NEWS, 3102 Delaware Av Kenmore, N.Y. Telephone 877-5027. Large selection of gay magazines, paperbacks & tabloids.

TALKING LEAVES, 3144 Main St., Buffalo, N.Y. Telephone: 837-8554 Gay periodicals gay novels, books of general interest.

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The Lambda Association of Bodybuilders. For info, write: L.A.B.B. P.O. Box 25, Kew Gardens Sta., New York, N.Y. 11415.

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If you need products such as leather handcuffs, elbow cuffs, body harnesses, studded and spiked items, etc. Come to Elmwood Leathers, 1077 Elmwood Ave., Buffalo, N.Y. 885-4110.

National Gay Contact Club-Men And Women. Low rates. SASE: Dean, PO Box 26044, San Jose, Calif. 95159

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